

REMARKS

Applicant respectfully requests that the above amendments be entered for purposes of the present application. Claims 1, 2, 5 and 6 to 16 are presented in the present application. Claims 1, 2 and 5 are cancelled. Claims 6 to 16 are newly added. Applicant respectfully requests that the above amendments be entered for purposes of the present application. All claims are supported by the original filed specification, drawings and claims.

Applicant presents 3 new independent claims. Claim 6 is directed a multi-use hair accessory. Claim 15 is directed to a method of wearing a multi-use hair accessory. Claim 16 is directed to a method of wearing a multi-use hair accessory as a neck warmer. Applicant respectfully submits that all claims presented in this application patentably distinguish over the prior art and are currently in condition for allowance. Accordingly, Applicant respectfully requests favorable consideration and that this application be passed to allowance.

The Final Action issued for the above-referenced application rejected claims 1 and 2 based upon U.S. Patent No. 5,875,488 to Milani (hereinafter "Milani"). The cited rejection is moot as claims 1 and 2 are cancelled herein. However, Applicant notes that the present invention, as claimed in claim 6, is clearly distinguishable from Milani. Milani is directed to a visor or cap provided with an elastic ponytail pull-through support. That is, Milani is directed to a visor rather than a hairband, as is claimed in claim 6 of the present application. Additionally, the visor of Milani has a separate band and ponytail pull-through. As described in the specification, the visor of Milani has and requires a ponytail pull-through means 30 which includes a pair of parallel elastic bands 31 and 32 shown in FIG. 3. The elastic bands are sewn onto the ends of a non-elastic fabric band by stitching shown as 35,36,37 and 38 in FIG. 4, and are therefore discontinuous. As a consequence Milani fails to provide at least one of the elements of the invention as claimed, including a continuous elastic band having a continuous circumference and continuously stretchable along the circumference thereof.

In contrast to the Examiners assertion that “the circumference is stretchable at elastic bands (31, 32)” (page 2) and is therefore continuously stretchable, only the elastic band members 31, 32 are elastic. The present invention is truly continuously an elastomeric material about it's circumference, provides a simple and inexpensive construction, is truly integrally formed as a unit having a cylindrical band and an elongate slit disposed along a portion thereof. Accordingly, for at least these reasons, Milani fails to anticipate the hair accessory of the present invention, as claimed in claim 6.

The Final Action issued for the above-referenced application similarly rejected claims 1 and 2 based upon U.S. Patent No.5,988,183 to Huang (hereinafter “Huang”). While, the cited rejection is moot as claims 1 and 2 are cancelled herein, Applicant notes that the present invention, as claimed in claim 6, is clearly distinguishable from Huang. Huang is directed to a hair organizer having an elongate composition and further having forked tails, which are tied together to hold the hair in position. In contrast, the hair accessory of the present invention is a substantially cylindrical band formed of an elastomeric material, the band having a continuous and unbroken circumference. Accordingly, for at least this reason, Huang fails to anticipate the hair accessory of the present invention, as claimed in claim 6.

In contrast to the Examiner's assertion that cylindrical band portion 20, which includes slid 11, is actually cylindrical, the entire disclosure discusses axial member 20 as being affixable by stitching to a carrying envelope 14 (Figs. 2 and 3) or as element 14 in Fig. 7. Since axial member 20 is fixed by stitching to a second member 14 it is clearly not continuous or integral. It is critical to understand that Figs. 1 and 1A show only a portion of the Huang device and as such are inherently discontinuous and incapable of being a circumference.

The Final Action issued for the above-referenced application also rejected claim 1 based upon U.S. Patent No.1,482,567 to Kirk (hereinafter “Kirk”). The cited rejection is moot as claim 1 is cancelled herein. However, Applicant notes that the present invention, as claimed in claim 6, is clearly distinguishable from Kirk. Kirk is directed to a means for retaining the hair around the brow, and at 1.5 pages in length with 1 figure is truly lacking in detail.

Contrary to the assertion, Kirk does not disclose a means for securing a ponytail. Moreover, as cited by the Action, Kirk is directed to a hair holder wherein the circumference is stretchable only by a buckle 4.

In similar contrast to the present invention, Kirk does not provide a continuous circumference; the buckle 4 breaks each band and requires manual manipulation to adjust. Similarly, buckles 4 are metallic and prohibit laundry due to rust concerns, and are not comfortable to wear. Kirk's openings between bands 1 and 2 fail to provide the hair support in the manner required in the present invention. It is recalled, that Applicants may be and are their own lexicographer, and as such Applicants have defined continuously stretchable about a circumference as disclosed. Such a use of the claim language cannot be differed via Examiner review of an applied reference. As a consequence, Kirk clearly fails to be continuous.

In contrast to Kirk, the hair accessory of the present invention is an integrally formed unit (meaning without additional devices) formed of a material that is continuously stretchable in at least one direction along the entire circumference thereof. Accordingly, for at least these reasons, Kirk fails to anticipate the hair accessory of the present invention, as claimed in claim 6.

The Final Action further rejected claim 5 as being obvious in view of the combination of U.S. Patent No. 6,145,131 to Obergfell (hereinafter "Obergfell") in view of U.S. Patent No. 4,998,544 to Huff (hereinafter "Huff"). Claim 5 is cancelled herein, accordingly the rejection of claim 5 is moot. However, Applicant notes that the cited combination fails to disclose all of the elements of the invention as claimed in new claim 15. Specifically, even if Obergfell and Huff are combined, as suggested by the Action, the cited combination still fails to teach a method of wearing a multi-use hair accessory, the accessory having a continuous and substantially cylindrical band formed of an elastomeric material, the band having a continuous and unbroken circumference, the band being stretchable along the entire circumference thereof, and an opening formed in the cylindrical band, the opening being an elongate slit disposed along at least a portion of the circumference of the band and sized to enable a wearer's ponytail to be pulled through and held securely.

Rather, Obergfell is directed to a clothing accessory. Specifically, Obergfell relates to a knotless adjustable wrap that is an "all-in-one," size adjustable clothing fashion accessory garment. Huff is directed to a combination headband and ponytail holder which includes a first flat band adapted for encircling a person's head, the band including an aperture for receiving a ponytail therethrough, and a second band adapted for encircling and holding a person's ponytail, the second band being attached to the first band and defining a second aperture aligned with the first aperture and sized to receive the ponytail therethrough.

The above specific missing elements and lack of teaching clearly does not render obvious a method of wearing a multi-use hair accessory, the band having a continuous and unbroken circumference, the opening being an elongate slit disposed along at least a portion of the circumference, as now claimed in claim 15.

The combination of Obergfell and Huff is unsupported by any teaching in either reference. Each reference presents and solves it's own problem without asserting useful combination with another item. Thus, there is no motivation to combine Obergfell, directed to a clothing accessory with Huff, directed to a hair accessory, absent hindsight from Applicant's disclosure. Accordingly, the combination of Obergfell and Huff fails to render the invention as claimed in claim 15 obvious.

In view of the foregoing, Applicant respectfully submits that the specification, the drawings and all claims presented in this application are currently in condition for allowance. Accordingly, Applicants respectfully request favorable consideration and that this application be passed to allowance.

Conclusion

Should any changes to the claims and/or specification be deemed necessary to place the application in condition for allowance, the Examiner is respectfully requested to contact the undersigned to discuss the same.

Applicant's representative believes that this Responsive Amendment and RCE is being filed in a timely manner with the appropriate fee. In the event that any extension and/or fee is required for the entry of this amendment the Director is hereby authorized to charge the fee to Deposit Account No. 10-0100 in the name of Lackenbach Siegel, LLP.

An early and favorable action on the merits is earnestly solicited.

Respectfully submitted,
LACKENBACH SIEGEL, LLP

By: 

Andrew F. Young
Reg. No. 44,001

Lackenbach Siegel, LLP
Lackenbach Siegel Building - One Chase Road
Scarsdale, New York, 10583
(914) 723-4300